

Applicant: Debra L. Holte Group Art Unit: 3643
Application No.: 10/822,481 Examiner: Son T. Nguyen
Filed: April 12, 2004 Supervisor: Peter M. Poon
Title: Orthopedic Pet Cushion 14 pages including 2 Exhibits
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Request for Reconsideration

I respectfully request that my application be reconsidered for allowance. Please find my arguments in the following pages.

MPEP Examining Procedures.

- The mere statement by the examiner that the wheelchair seat (DeBellis 5836654) is capable of being modified into a pet cushion or includes all of the individual elements found in my
Claim 27, does NOT establish a *prima facie* case of obviousness.
- The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.
In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). MPEP 2143.01 Page 2100-124.
- Although a prior art devise "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432. Also see *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992)
- Fact that the claimed invention is within the capabilities of one of the ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness.
- The statement (by the examiner) that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is NOT sufficient to establish a *prima facie* case of obviousness without some objective reason to combine teaching of the reference. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat App. & Inter 1993).